

SERVICE DATE – JULY 26, 2018

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 55 (Sub-No. 778X)

CSX TRANSPORTATION, INC.—ABANDONMENT EXEMPTION—IN FULTON
COUNTY, GA.

Decided: July 25, 2018

CSX Transportation, Inc. (CSXT) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon an approximately 2.04-mile rail line referred to as the Kudzu Line in its Southern Region, Atlanta Division, Atlanta Terminal Subdivision between milepost ANB 862.66 and milepost ANB 862.95 and between milepost ANB 862.66 and milepost former ANB 863.94, including any industry leads or spur tracks, in Fulton County Ga. (the Line). Notice of the exemption was served and published in the Federal Register on June 27, 2018 (83 Fed. Reg. 30,211). The exemption is scheduled to become effective on July 27, 2018.

The Board's Office of Environmental Analysis (OEA) served an Environmental Assessment (EA) on July 3, 2018, recommending that one condition be imposed on any decision granting abandonment authority. In the EA, OEA noted that CSXT served a historic report on the Georgia State Historic Preservation Officer (SHPO), pursuant to 49 C.F.R. § 1105.8(c). SHPO submitted a comment stating that the Line proposed for abandonment is a contributing element to the National Register of Historic Places-eligible Atlanta, Birmingham, and Coast Railroad. Because CSXT is negotiating a trail use agreement for the Line that includes a contingency to provide for future Section 106 compliance, as needed, SHPO stated that the proposed abandonment would have no adverse effect to historic properties at this time. After reviewing the record and SHPO's comments, OEA is recommending a condition requiring the railroad to retain its interest in and take no steps to alter the historic integrity of all historic properties including sites, buildings, structures, and objects within the project right-of-way (the Area of Potential Effect) eligible for listing or listed in the National Register of Historic Places until completion of the Section 106 process.

OEA issued its final EA on July 19, 2018, noting that no new comments to the EA were received by the July 17, 2018 due date and recommending again that the one previously recommended condition be imposed. Accordingly, based on OEA's recommendation, the historic preservation condition proposed in the EA and final EA will be imposed.

In the EA, OEA also stated that the right-of-way may be suitable for other public use following abandonment and salvage of the Line. On June 27, 2018, Atlanta Beltline, Inc. (ABI), a Georgia non-profit corporation, filed a request for issuance of notice of interim trail use or

abandonment (NITU) to negotiate with CSXT to establish interim trail use and rail banking under the National Trails Systems Act (Trails Act), 16 U.S.C. § 1247(d) and 49 C.F.R.

§ 1152.29. Pursuant to 49 C.F.R. § 1152.29, ABI has also submitted a statement of willingness to assume financial responsibility for the right-of-way and has acknowledged that the use of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation of the right-of-way for rail service. In a response filed on June 27, 2018, CSXT notified the Board that it is willing to negotiate an agreement for interim trail use with ABI.

Because ABI's request complies with the requirements of 49 C.F.R. § 1152.29 and CSXT is willing to negotiate for trail use, a NITU will be issued. The parties may negotiate an agreement for the right-of-way during the 180-day period prescribed below. If an interim trail use agreement is reached (and thus, interim trail use is established) the parties shall jointly notify the Board within 10 days that an agreement has been reached. 49 C.F.R. § 1152.29(d)(2) and (h). If no agreement is reached within 180 days, CSXT may fully abandon the Line, subject to any outstanding conditions. 49 C.F.R. § 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation of the right-of-way for rail service.

This decision, and the proposed abandonment if implemented as conditioned, will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, the notice served and published in the Federal Register on June 27, 2018, exempting the abandonment of the Line described above is modified to the extent necessary to implement interim trail use/rail banking as set forth below to permit CSXT to negotiate with ABI for trail use for the Line for a period of 180 days from the service date of this decision and notice, until January 22, 2019. The abandonment is also subject to the conditions that CSXT shall: (a) retain its interest in and take no steps to alter the historic integrity of all historic properties including sites, buildings, structures, and objects within the Area of Potential Effect that are eligible for listing or listed in the National Register of Historic Places until the Section 106 process of the National Historic Preservation Act, 54 U.S.C. § 306108, has been completed, (b) report back to OEA regarding any consultations with the SHPO and the public, and (c) not file its consummation notice or initiate any salvage activities related to the abandonment (including the removal of tracks and ties) until the Section 106 process has been completed and the Board has removed this condition.
3. If an interim trail use/rail banking agreement is reached, it must require the trail sponsor to assume, for the term of the agreement, full responsibility for: (i) managing the right-of-way; (ii) any legal liability arising out of the transfer or use of the right-of-way (unless the

sponsor is immune from liability, in which case it need only indemnify the railroad against any potential liability); and (iii) the payment of any and all taxes that may be levied or assessed against the right-of-way.

4. Interim trail use/rail banking is subject to possible future reconstruction and reactivation of the right-of-way for rail service and to the trail sponsor's continuing to meet its responsibilities for the right-of-way described in paragraph 3 above.

5. If an interim trail use agreement is reached (and thus, interim trail use is established), the parties shall jointly notify the Board within 10 days that an agreement has been reached. See 49 C.F.R. § 1152.29(d)(2) and (h).

6. If interim trail use is implemented, and subsequently the trail sponsor intends to terminate trail use on all or any portion of the right-of-way covered by the interim trail use agreement, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

7. If an agreement for interim trail use/rail banking is reached by January 22, 2019, for the portion of the right-of-way subject to the NITU, interim trail use may be implemented. If no agreement is reached, CSXT may fully abandon the Line, subject to any outstanding conditions.

8. This decision and notice is effective on its service date.

By the Board, Amy C. Ziehm, Acting Director, Office of Proceedings.